



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 6, 1996

Ms. Tina Plummer
Open Records Coordinator
Texas Department of Mental Health
and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR96-2041

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 101799.

The Texas Department of Mental Health and Mental Retardation (the "department") received a request for information concerning an alleged incident of sexual assault at a department facility and any information concerning the perpetrator of the alleged assault. You assert that the APS Facility Abuse and Neglect Investigative Report and a Request for Review of Finding are excepted from public disclosure pursuant to section 552.101 of the Government Code.

Section 552.101 excepts from required public disclosure information that is confidential by law, including information deemed confidential by statute. You raise Human Resources Code section 48.101(a)(3), which reads as follows:

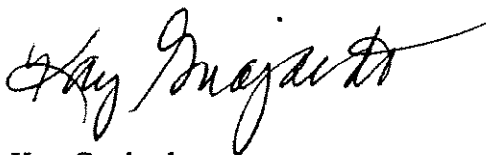
(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter [Human Resources Code section 48.001 *et seq* pertaining to investigations of abuse, exploitation, or neglect of an elderly or disabled person] or in providing services as a result of an investigation.

We believe section 48.101(a)(3) covers the information at issue. Although subsection (d) of section 48.101 provides that the Department of Protective and Regulatory Services ("DPRS") by rule shall provide for the release of certain information to a person who is the subject of a report of abuse, neglect, or exploitation or to that person's legal representative, we are not aware of a DPRS rule that would require the release of the information in this instance. Moreover, the department's rules provide for the release of investigative reports to a department employee only if the employee requests a grievance hearing for disciplinary action taken as a result of an investigation. *See* 25 T.A.C. § 404.15, 40 T.A.C. § 710.12. The employee here was apparently not disciplined as a result of the investigation. Accordingly, the department must withhold the information from the requestor based on Government Code section 552.101.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 101799

Enclosures: Submitted documents

cc: Mr. Steve A. Keathley
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(w/o enclosures)